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STATE SUPERVISION OF PROBATION

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STATE SUPERVISION OF PROBATION¹

A new method and a new spirit has been brought about in criminal jurisprudence by the development of the probation system. The method has been grafted upon an antiquated criminal court system, producing profound changes. Developing ideals of social service and social diagnosis have produced the probation method and are in turn developed and fostered by its application. And yet the application of the probation system in courts throughout the United States has been as various and inconsistent as one could well imagine. Probation has grown up here and there, in some places spontaneously, in others as a borrowed idea. No two states have the same system or law. Within most states there is little uniformity of method and only a partial application of the law. Some states have a law but practically no real probation work in their courts.

The first probation law in any country was passed in Massachusetts in 1878. This was a revolutionary enactment, providing for a salaried probation officer for the Boston courts; giving him the widest powers to investigate and recommend to the court; granting to the court the power to place on probation with no limitations whatever upon the nature of the offense or the previous convictions or age of the offender; leaving the length and conditions of probation entirely to the court's discretion.

The Massachusetts experiment was successful and the probation idea spread and developed rapidly in other states until today every state in the United States and, in addition, most foreign countries have probation laws. The example of the pioneer state has not, however, been followed in all respects. One of these is in the matter of allowing unlimited judicial discretion in applying probation. The statutes of many states have attempted to circumscribe narrowly the offenses for which persons may be placed on probation. In fourteen states the law applies only to children's cases. In others adults are admitted to probation only for a first con-

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viction or only in minor cases. Experience has shown that these attempts to regulate probation have failed of their purpose. The basic theory of probation is that the nature of the offense does not necessarily determine whether an offender will make good on probation, but that this depends upon other individual factors, such as character, mental condition and attitude, habits and home conditions. The determination of these factors calls for the finest judgment of the court, unhampered by artificial classification.

Another feature of the Massachusetts system which has not as yet been generally followed is the establishment of state supervision. This principle was incorporated in the first state-wide probation law which was enacted in Massachusetts in 1880. This provided that any city or town might establish the office of salaried probation officer. The appointment was to be certified to the State Prison Commissioners and every probation officer was required to make a monthly report to the Commissioners with such information as they might require. From that time until the establishment of the Massachusetts Commission on Probation in 1908, state supervision and direction of the developing probation work in that state was carried on by the Prison Commissioners. The Commission on Probation since its establishment has been an effective force in developing and co-ordinating the work of the probation officers throughout the state.

The first independent state commission for the supervision of probation work was established, however, in the state of New York in 1907, one year before the Massachusetts commission. The first probation law in New York was enacted in 1901, but the system at first developed slowly and irregularly. In some places good work was done, in some places bad, in most places not any. The payment of salaries to probation officers was permissive and very few communities took advantage of the law. They had not been in the habit of spending money for this purpose, and so without special campaigns in each community the courts went along on the old volunteer basis.

Under the leadership of some of the ablest social workers of the state the appointment of a special legislative commission to study the growing probation work in the courts of the state, both juvenile and adult, was secured. This commission made a thorough investigation and brought out a comprehensive report. Little effective probation work was found and no uniformity of methods. In its report to the governor in 1906 this commission said: "The appointment of proba-

tion officers has been carried into effect in but few of the courts." Describing the irregularity and inconsistency of the work then done it said: "The underlying weakness of the probation system as now conducted is to be found in the very large number of courts possessing the power of appointment of probation officers and in the absence of any supervision, co-ordination or organization of the work of probation officers, except such as may be exercised by the courts to which they are attached. "There are practically as many systems of probation as there are courts using the probation law."

To aid in curing these evils and to extend the probation service to all courts of the state, this commission recommended central state supervision. Their report said: "We are, therefore, strongly of the opinion that, while probation work must always be permitted a considerable degree of flexibility to meet local conditions and individual needs, there should be provided, nevertheless, some form of central oversight. This should involve the collection of information in regard to the extent to which probation is utilized in different portions of the state from time to time, the manner in which probation work is carried on, and the value of the results secured. It should include the authority to make formal and detailed investigations of probation work in any given court or locality, when such are deemed advisable; it should provide for the making of suggestions to the legislature from time to time for the improvement of the probation system, and for recommendations from time to time to public authorities, judicial and executive, concerned in the administration of probation; it should involve the promotion of probation work in those localities in which it is not availed of."

As a result of the report of this Commission a bill was introduced in the Legislature and, with the active sympathy and support of Governor Hughes, was passed in 1907, and a permanent commission was created, composed of seven members, four of whom are appointed by the Governor for terms of four years, one is designated by the State Board of Charities, one by the State Prison Commission, with the Commissioner of Education, member ex-officio. This Commission, which is unpaid, was authorized to employ a secretary and other employes, was required to meet regularly, to "exercise general supervision over the work of probation officers," to "keep informed as to their work," to improve and extend the probation system, to collect and publish information thereon and to make recommendations. It was not given authority to appoint or remove any probation

officers. Its authority is by way of investigation and recommendation, and it is sometimes the case in a democratic community that the power of recommendation may accomplish greater results than any mandatory power.

The New York State Probation Commission has completed twelve years of active service. What have been its methods of work and what has it accomplished? These may be briefly outlined as follows:

1. From the start it has carried on local campaigns to introduce and extend probation work. In these the cooperation of local judges, lawyers, clergymen, social workers, women's clubs and other organizations and individuals interested have been freely used. Meetings have been held and newspaper publicity freely availed of. The campaigns have usually come to a focus in hearings before city councils and county boards of supervisors at which appropriations for salaries and expenses of probation officers have been asked and obtained.

2. Investigation and standardization of the probation work has been carried on throughout the state. Agents of the Commission endeavor to visit all the more important probation officers in the state once a year, the others as frequently as possible. Following these visits and investigations written reports containing recommendations are sent to the judges, probation officers and the public fiscal authorities. The recommendations have to do with better standards of work, more adequate records and needed extensions of the service. Information is also collected by correspondence and reports from the probation officers. Detailed written reports are required from every probation officer in the state, both salaried and volunteer, each month.

3. The Commission carried on much work to educate probation officers and the public in the proper use of the probation system, and in the improvement of probation methods. It publishes thirty-eight varieties of blank forms and record books, forming a complete system of probation officers' records. These are distributed free to probation officers, especially those just starting their work. It publishes an annual report containing complete statistics on the use of probation and much educational material, a manual for probation officers which is a complete text book on the laws and methods of probation. In addition it has published a large number of educational pamphlets and leaflets. It has conducted every year at least two state conferences, one for probation officers and the other for the judges of the inferior courts. The proceedings of these conferences are published and widely distributed.

4. The Commission has supported much legislation for improving the probation system, and prevented the passage of legislation that would injure it. Among other laws obtained was that providing for county probation officers authorized to serve not only in the higher courts but in the courts of towns and villages, thereby establishing for the first time in the state rural probation. It has promoted laws establishing children's courts, courts of domestic relations and extending the use of probation in felony cases.

5. It has secured the placing of all probation officers in the state under the civil service and has cooperated very closely with the State Civil Service Commission in a majority of all examinations for probation officers. It has constantly recommended the use of the oral examination at which personality and experience can be properly judged and has assisted in conducting a large majority of the oral examinations held in the state.

It has been again proved in New York State that the passage of a law does not necessarily bring enforcement with it and sometimes is only the first step in bringing about a reform. The passage of the probation law did not mean the establishment of effective probation throughout the state. That has been a slow, tedious process, not yet completed but far advanced in comparison with the situation of twelve years ago. Every year since the New York Probation Commission started work it has reported new officers and new localities establishing probation offices. More than half the counties of the state, including all the larger ones, have county probation offices. In most of the larger city courts there is now for the first time employed an adequate number of probation officers. Over 22,000 persons were placed on probation in the state during 1919.

The value of a state probation department or bureau work does not stop with its extension work. More important still is its work of standardization and public education. It should furnish information regarding the probation law and methods to all who apply and publish reports and educational literature, conduct conferences, and, most important of all, endeavor by personal visitation to improve the quality of the work which is being done and establish standards. This can only be done by frequent and direct contact with the probation offices. The visiting and investigation of probation offices by a state supervisory department or bureau is as necessary to get results in this field as is the inspection of institutions.

It cannot be contended that probation work is merely local work and so should be taken care of by local authorities. The probation work in a given community affects the entire state. If it is badly done criminals will go out from that locality into other part of the state or other states, an increasing menace, and the public of other states will pay for unnecessary institutional commitments. If it is well done good citizens will be sent out and the cost of maintaining penal institutions, both to the local community and to the entire state, will be lessened. In the state of New York it has been shown there has been a marked falling off in the population of correctional institutions as compared with the increase in general population, traceable in a considerable degree to the growth of probation. It, therefore, seems clear that as a matter of simple economy, as well as to promote the general welfare, the state has a duty and an opportunity in promoting probation. Its establishment and regulation should not be left to local communities alone.

Divergent methods prevail in various states in regard to the appointment of probation officers. In the small states of Rhode Island and Vermont there are State Probation Officers, appointed by and serving under the direction of State Boards of Charities. The State Probation Officer in turn appoints all probation officers throughout the state. In Utah there is a Juvenile Court Commission which appoints both judges and probation officers and supervises their work. In Wisconsin, also, there is a State Probation Officer who serves under the State Board of Control. His duties however, are to supervise adult probation work and not to appoint local probation officers.

In the great majority of states, probation officers are appointed by the judges of the courts in which they serve. In a few states, particularly New York and New Jersey, all probation officers are under the civil service. In Massachusetts the officers are not under civil service but the State Commission on probation conducts unofficial examinations and furnishes judges with recommended lists. The experience of New York State with the appointment of all probation officers under the civil service has been highly satisfactory. The majority of these examinations are conducted with the assistance and co-operation of the State Probation Commission. Oral examinations are used in all cases. Practical knowledge of the duties of the office, experience in related fields and personality determine the ratings. Political appointments have been largely eliminated.

Much might be said for the appointment of probation officers by a state probation commission or department in order to bring about uniformity and a higher grade of officers. The plan has not yet, however, been tried in any large state, but whether the state agency is given power to appoint or merely to supervise probation officers, as in New York and Massachusetts, one of its most important functions has been found to be that of watching appointments, suggesting candidates and co-operating with the authorities who actually make appointment so as to improve the personnel which is the all-important thing.

Experience has shown that in most courts the judges alone cannot or will not give adequate supervision to the work of probation officers. Politics enter in; many judges are not good administrators; in the minor courts their duties are engrossing and arduous. While no state supervisory department is going to prevent the evils which occur when judges are incompetent or lack independence, it has been found that state supervision can go a long way toward offsetting these evils and has not only assisted in getting better appointments but has helped greatly in holding probation officers to higher standards in their work. Not all judges are alike. Most judges, I believe, are sincerely desirous of making their probation departments contribute as much as possible toward human welfare. Such judges generally welcome the assistance of a state probation commission and co-operate to the fullest extent.

The idea of state supervision of probation is new. As yet only two states have independent commissions charged exclusively with the supervision of all probation work. Besides these the states of Connecticut, New Hampshire, Colorado, Michigan and Minnesota require probation officers to report to State Boards of Charities and corrections or similar departments. In other states the need has been felt for effective state control or supervision.

The National Probation Association at a recent conference adopted the following resolution:

"WHEREAS, The service of state probation commissions in the states of New York and Massachusetts has gone far to promote the extension of probation and to give uniformity and efficiency to its administration, and

"WHEREAS, Probation has advanced from a localized institution to a place of great accountability in the correctional system of many states and its extension and standardization are vital to the humane and effective application of the criminal law; be it

“Resolved, That the National Probation Association urges upon state governments the creation of probation commissions to extend and supervise probation, and pledges its support to the probation officers and other agencies for humane advance in their efforts to secure the establishment of such commissions.”

In the development of efficient methods for dealing with all the dependent and delinquent classes, not only state commissions, but a probation bureau in connection with one of the Federal departments, has been proposed and could perform extremely valuable services in developing and co-ordinating the system throughout the nation.

RESOLUTIONS ADOPTED BY THE INTERNATIONAL PRISON CONGRESS AT WASHINGTON IN OCTOBER, 1910.

“Resolved: That the effects of probation are beneficial when applied with due regard to the protection of the community, and to persons who may reasonably be expected to reform without resorting to imprisonment; and when the probationers are placed for a reasonable length of time under the supervision of competent officers;

“That the effects of suspended sentence, without probationary oversight, are difficult, if not impossible, to ascertain;

“That it is desirable to introduce and extend laws providing for probation, and to provide, in each state or country, some central authority which will exercise general supervision over probation work.”

REPORT OF THE COMMITTEE ON PROBATION AND PAROLE OF THE AMERICAN INSTITUTE OF CRIMINAL LAW AND CRIMINOLOGY IN 1910 RECOMMENDING STATE SUPERVISION OF PROBATION.

“Historically, probation systems have grown gradually, usually under permissive legislation, as a branch of judicial machinery. Experience has shown, notably in New York and Massachusetts, that at a certain period of such growth a centralization of control, or at least of supervision, is of paramount necessity. Divergencies, and often absurdities, of local use and practice, can be avoided only by this means. And your committee believes that its extension to new territory and its development in states now using the system should include the establishment of a central state board hav-

ing large authority to prescribe forms for records and reports, suggest and urge uniform methods of carrying on the work, promote co-ordination, and exercise general supervision over the probation work. By this means can best be avoided vagaries in practice which tend strongly to bring the entire system into disrepute."

REPORT OF THE COMMITTEE ON PROBATION AND PAROLE OF THE AMERICAN INSTITUTE OF CRIMINAL LAW AND CRIMINOLOGY IN AUGUST, 1916, RELATING TO STATE SUPERVISION OF PROBATION.

"The original report of this Committee in 1910 pointed out that the growth of probation which has been more or less sporadic, has resulted in a variety of methods and standards, and has subsequently made necessary state supervision and co-ordination. The committee recommended that the process should be reversed, and that the creation of state supervising bodies should be preliminary to the further extension of the system. Some form of state supervision is found in about a dozen states. Where special commissions do exist, the benefits have been very material. The wider use of the system has been promoted; but more important still, its operations have been studied and strengthened, the personnel of the probation officers has been improved, and carefully framed legislation has been secured. We cannot too highly endorse the maintenance of an alert, comprehensive state supervision in each commonwealth."

RESOLUTIONS ADOPTED BY THE AMERICAN INSTITUTE OF CRIMINAL LAW AND CRIMINOLOGY AT BOSTON, SEPTEMBER, 1919

"*Resolved*, That the American Institute of Criminal Law and Criminology endorses and urges the adoption in all states which are now without probation laws, or in which the application of probation is limited to minors or lesser offenders, the adoption of adequate probation laws. Such laws should permit judges to exercise wide discretion in releasing offenders on probation and should provide for salaried probation officers in all courts; be it also

"*Resolved*, That we urge all judges, or the authorized officials, to provide a sufficient number of probation officers in all districts, so that the probation system may be used to the fullest



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extent compatible with the protection of society and the reformation and rehabilitation of the offender;

“That adequate salaries be appropriated for probation officers in order to secure the entire time of able men and women;

“That in every state we favor and urge the establishment of a State Probation Commission or Bureau to supervise probation work, both adult and juvenile, and to urge its extension in all parts of the respective state.”